



# Iowa General Assembly

## 2015 Legal Updates

Legislative Services Agency – Legal Services Division

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**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### **OPERATING WHILE INTOXICATED: REASONABLE SUSPICION AND IMPLIED CONSENT**

Filed by the Iowa Supreme Court

January 9, 2015

State of Iowa v. Carrie McIver

No. 13-1106, 858 N.W.2d 699 (Iowa 2015)

[http://www.iowacourts.gov/About\\_the\\_Courts/Supreme\\_Court/Supreme\\_Court\\_Opinions/Recent\\_Opinions/20150109/13-1106.pdf](http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20150109/13-1106.pdf)

**Factual Background.** On October 14, 2012, a peace officer performed a traffic stop on a vehicle operated by the defendant, Carrie McIver, after the officer observed the vehicle exit a parking lot by traveling over a grassy area, down a sidewalk, and over the curb of a street, on which the vehicle proceeded to weave within its lane of travel. The officer had McIver perform a variety of field sobriety tests, most of which she failed. However, the officer was unable to detect the odor of alcohol on her breath and failed to obtain a reading from a preliminary breath test. After McIver refused further preliminary testing, the officer arrested her for improper use of lanes in violation of Iowa Code section 321.306.

At the jail, a second officer invoked Iowa's implied consent law and requested that McIver submit to a breath test. She refused and requested that a blood test be performed instead because she was taking prescription medication. The officer informed her that she could obtain a blood test after submitting to a breath test. She continued to refuse the breath test, and as a result, no test was administered.

**Procedural Background.** McIver was charged with operating while intoxicated. Before trial, she moved to suppress the evidence against her, claiming that there was no probable cause or reasonable suspicion for the traffic stop, and that the officer violated Iowa's implied consent law by failing to administer a blood test after acquiring reasonable grounds to believe she was impaired by a prescription drug. The district court denied her motions to suppress and found her guilty at trial. She appealed, claiming the district court erred in failing to suppress the evidence against her.

**Issues.** The Iowa Supreme Court (Court) considered two issues on appeal. First, the Court evaluated whether the traffic stop was valid under the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Iowa Constitution. Second, the Court assessed whether a peace officer is required to offer a blood or urine test instead of a breath test to a motorist reasonably suspected of driving under the influence of a drug other than alcohol.

#### **Analysis.**

**Claims Brought Under the United States and Iowa Constitutions.** Although the Court considers claims brought under the Iowa Constitution independently of claims brought under the United States Constitution, McIver did not argue that any difference exists in the scope or effect of the constitutional provisions. Therefore, the Court analyzed McIver's claims under both constitutions in the same manner.

**Validity of the Traffic Stop.** A traffic stop is permissible when supported by either probable cause, which is necessary to make an arrest, or reasonable suspicion of a crime, which is necessary to briefly detain a person for further investigation. When an officer observes any type of traffic violation, the violation establishes both probable cause and reasonable suspicion. The parties disagreed about whether the officer observed a violation of a traffic law before initiating the traffic stop on McIver, but the Court found that line of analysis unnecessary. Instead, the Court determined the officer had reasonable suspicion to believe McIver was operating the vehicle while intoxicated due to a variety of circumstances, including the fact the traffic stop took place shortly after the bars in the area had closed for the night, the manner in which the vehicle was operated when it left the parking lot, and the fact the vehicle weaved within its lane of travel.

**Interpretation of Iowa's Implied Consent Law.** The Court applies a statute based on its plain meaning. If a statute is

ambiguous, the Court engages in statutory interpretation. The statute at issue, Iowa Code section 321J.6(3), states, in part, “[n]otwithstanding subsection 2, if the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a blood or urine test shall be required even after another type of test has been administered.”

Mclver argued that the phrase “a blood or urine test shall be required” requires an officer to affirmatively request a blood or urine test after the officer has reasonable grounds to believe a motorist is under the influence of a drug other than alcohol. The State argued that the phrase requires a motorist to submit to a request for a blood or urine test only if such a request is made by an officer. The Court determined that the statute was ambiguous due to the absence of a noun or pronoun in the phrase that would demonstrate whether the officer is required to request the test, or the motorist is required to submit to the test when requested.

To resolve the ambiguity, the Court analyzed the statute’s background and history. Iowa’s implied consent law was enacted in 1963 and contained two subsections that generally contemplated administering a single test to determine the alcoholic content of a motorist’s blood. Before 1986, when subsection 3 was added by the Legislature, the law did not specifically require a motorist to submit to multiple tests, even when the results of the initial test did not indicate alcohol intoxication but the officer maintained reasonable grounds to believe the cause of intoxication may be a drug other than alcohol.

The Court determined that the enactment of subsection 3 indicated the Legislature’s intent to supplement the existing implied consent procedures for the purposes of filling a gap in the law by requiring a motorist to submit to additional testing when an officer has reasonable grounds to believe the cause of intoxication may be a drug other than alcohol. The Court recognized that Iowa’s implied consent law is built on the premise that consent imposes a requirement on motorists to submit to testing when testing is properly requested. In addition, the Court noted that subsection 3 was not related to assisting motorists in obtaining evidence to support a prescription-drug defense, because the statute relating to the prescription-drug defense was not amended by the Legislature until 1998. Finally, the Court found that the addition of the option for an officer to request a blood test under subsection 3, which was enacted by the Legislature in 1998, served to strengthen an officer’s position rather than impose a new requirement on an officer.

**Holding.** The Court held that the district court properly overruled Mclver’s motions to suppress for two reasons: the traffic stop was valid because the officer had reasonable suspicion to believe Mclver was operating the vehicle while intoxicated, and Iowa Code section 321J.6(3), requires a motorist to submit to a blood or urine test when such a test is properly requested, but does not require an officer to request a blood or urine test.

**Concurrence and Dissent.** Justice Wiggins, joined by Justices Hecht and Zager, wrote an opinion concurring in part and dissenting in part. The Justices agreed the traffic stop was valid and Iowa Code section 321J.6(3) is ambiguous, but disagreed with the majority’s resolution of the ambiguity. Justice Wiggins wrote that the addition of the blood test option by the Legislature in 1998 indicated the Legislature’s intent to give meaning and support to the amended prescription-drug defense statute enacted the same year. In addition, Justice Wiggins noted that Iowa Code section 321J.6(3), which originally stated that “a urine test may be required,” was amended to state “a blood or urine test shall be required.” By changing the word “may” to “shall,” Justice Wiggins concluded that the Legislature intended to require an officer to arrange to administer a blood or urine test when the officer has reasonable grounds to believe the cause of intoxication may be a drug other than alcohol.

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